



08 JUL 2002

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In re Application of
CAPRATHE et al.
Application No.: 09/674,812
PCT No.: PCT/US99/09463
Int. Filing Date: 30 April 1999
Priority Date: 05 May 1998
Attorney Docket No.: BBI-5060CPUS
For: SUCCINAMIDE INHIBITORS OF
INTERLEUKIN-1B CONVERTING
ENZYME

DECISION ON PETITION

This is a decision on applicants' "Petition to Revive an Abandoned Application Pursuant to 37 CFR 1.137(b)" filed in the Patent and Trademark Office (PTO) on 22 May 2002.

BACKGROUND

On 30 April 1999, applicants filed international application no. PCT/US99/09463 which claimed a priority date of 05 May 1998. A proper Demand was filed with for International Preliminary Examination Authority prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 06 November 2000 (05 November 2000 was a Sunday).

On 06 November 2000, applicants filed a Transmittal Letter for entry into the national stage accompanied, *inter alia*, by: the requisite basic national fee and a copy of the international application.

On 19 December 2000, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) along with a surcharge for providing the oath or declaration later than 30 months from the priority date was required. The notification set a one (1) month period for response. The notification was mailed to the attorney of record listed on the 06 November 2000 Transmittal Letter.

On 04 September 2001, applicants filed: Status Inquiry Letter; Notification of Change of Mailing; Notification of Change of Attorney Docket Number; copy of Revocation of

Prior Powers of Attorney and Appointment of New Power of Attorney; and a Return Postcard card.

On 11 September 2001, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 19 December 2000 within the time period set therein. The Notification of Abandonment was mailed to the attorney of record listed on the 06 November 2000 Transmittal Letter.

On 21 December 2001, applicants filed "Request for Withdrawal of Notification of Abandonment" which was treated as a petition under 37 CFR 1.181. Applicants petition was dismissed without prejudice in a decision dated 08 February 2002.

On 21 May 2002, applicants filed "Petition to Revive an Abandoned Application Pursuant to 37 CFR 1.137(b)."

DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c). Applicants have satisfied Items (2)-(4).

With regard to Item (1), the proper response was the submission of the declaration. A review of the declaration filed on 22 May 2002 reveal that the declaration is not in an acceptable form. Specifically, there is an issue as to whether the declaration has been properly executed. The declaration filed with the petition includes a duplicate sheet of page 4 of 6 and page 6 of 6. It is unclear if the inventors were presented with only page 4 and 6, in which case the execution would be improper, or if they were presented with a complete declaration for signing, but counsel subsequently compiled the declaration into the single document filed 22 May 2002, which is improper. (See MPEP 201.03.)

Therefore, applicants have not satisfied item (1) above.

Since applicants have not met the requirements for revival of an application under 37 CFR 1.137(b), revival at this time would not be proper.

CONCLUSION

The petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice and the application remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, an appropriate response to this decision must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)."

Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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